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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
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|------------------------------|---|---------------------------|
| 13 UNITED STATES OF AMERICA, |) | CR 17-00604 CRB |
| |) | |
| 14 Plaintiff, |) | UNITED STATES' SENTENCING |
| |) | MEMORANDUM |
| 15 v. |) | |
| |) | |
| 16 BENJAMIN ALFRED MARTIN, |) | |
| |) | |
| 17 Defendant. |) | |
| |) | |

18 **INTRODUCTION**
19

20 For the reasons set forth below, the United States respectfully recommends that the Court sentence
21 Defendant, Benjamin Alfred Martin, to a term of imprisonment not to exceed 36 months.

22 **BACKGROUND**

23 Defendant and Bill John Lockhart, Defendant's co-defendant and ex-boyfriend, lived together in
24 an apartment in San Francisco. PSR ¶ 10. Sometime in late March 2017, Lockhart admitted to Defendant
25 that he was addicted to child pornography. *Id.* at 14. Rather than reporting Lockhart, Defendant aided
26 and abetted Lockhart's possession of child pornography. *Id.* Defendant counseled Lockhart on how to
27 use computer technology in furtherance of Lockhart's possession, including moving child pornography
28

1 files from a virtual machine in a way that preserved the files and avoided their deletion. *Id.* Defendant
 2 was aware that the child pornography was on multiple electronic devices in their apartment. *Id.*

3 On May 10, 2017, Law enforcement arrested Defendant and Lockhart. *Id.* at 6. Law enforcement
 4 reviewed their electronic devices. During a forensic review of Lockhart’s Sandisk thumb drive, an
 5 examiner located 194 videos and 150 images of child pornography. *Id.* at 17. The examiner found over
 6 30 videos and 120 images of child pornography on a Data Traveler thumb drive. *Id.* All of the videos
 7 and images depicted prepubescent minors engaged in sexual acts. *Id.* Several files depicted infants being
 8 raped. *Id.* The Sandisk thumb drive contained several document files that had descriptive narratives of
 9 child abuse and exploitation. *Id.* One file described how to groom and molest children, and how to avoid
 10 detection by law enforcement. *Id.* Law enforcement found hundreds of images and videos of child
 11 pornography involving children as young as several months old to the age of 10 on a Lenovo laptop
 12 belonging to Defendant. *Id.* at 18.

13 Lockhart pled guilty to possession of child pornography, and the Court sentenced him to 36 months
 14 of imprisonment and five years of supervised release. PSR ¶ 5. On May 3, 2019, Defendant pled guilty
 15 to a one-count Superseding Information charging Defendant with a violation of 18 U.S.C. §§
 16 2252(a)(4)(B) and (b)(2) and 2 – Aiding and Abetting the Possession of Child Pornography. *Id.* at 2.

17 ARGUMENT

18 Defendant aided and abetted Lockhart in committing a serious crime—possession of child
 19 pornography. “[A]n aider and abettor is a principal and can be punished as such.” *United States v. Bryan*,
 20 483 F.2d 88, 95 (3d Cir. 1973). Possession of child pornography is a serious offense. “Photographs and
 21 films showing juveniles engaged in sexual activity is intrinsically related to the sexual abuse of children,
 22 because this documentation is a permanent record of the children’s participation.” *United States v.*
 23 *Blinkinsop*, 606 F.3d 1110, 1117 (9th Cir. 2010) (internal quotations omitted). “The children involved in
 24 pictorial and cinematic pornography additionally endure ongoing harm because their images have been
 25 preserved in a permanent medium.” *Id.*

26 Defendant is not as culpable as Lockhart, but he still played a role in spreading these enduring
 27 images of harm. Lockhart was involved with child pornography years before he met Defendant.

1 Approximately six weeks before Defendant was arrested, Lockhart revealed to Defendant that he was
2 involved in collecting and distributing child pornography. Instead of going to law enforcement or simply
3 leaving Lockhart, Defendant chose to aid Lockhart in obtaining and maintaining his collection of child
4 abuse.

5 Defendant was fully capable of leaving Lockhart. He does not suffer from a lack of cognitive
6 ability. Despite not completing a college degree, Defendant taught himself engineering and has been
7 working full-time as an engineer for several years. PSR ¶¶ 86-94. Nor did Lockhart force Defendant to
8 aid him. Indeed, “Lockhart was scared, did not know what to do, and felt the defendant would leave him.”
9 *Id.* at 63.

10 Defendant stated to Probation that “he felt he should be understanding since Mr. Lockhart was
11 about his methamphetamine use.” *Id.* But Defendant did more than try to understand Lockhart—he
12 helped him to possess child pornography. Defendant’s choice further memorialized the suffering of
13 children.

14 The Court should hold Defendant accountable for his actions because the nature and circumstances
15 of the offense is serious. Defendant also needs to be held accountable because “possessing child
16 pornography...fuels the demand for the creation and distribution of child pornography.” *United States v.*
17 *Daniels*, 541 F.3d 915, 924 (9th Cir. 2008). Holding Defendant accountable will deter others from
18 possessing child pornography and aiding and abetting those involved in child pornography.

19 “General deterrence is crucial in the child pornography context” because “[y]oung children were
20 raped in order to enable the production of the pornography that the defendant both downloaded and
21 uploaded....The greater the customer demand for child pornography, the more that will be produced.
22 Sentences influence behavior, or so at least Congress thought when in 18 U.S.C. § 3553(a) it made
23 deterrence a statutory sentencing factor. The logic of deterrence suggests that the lighter the punishment
24 for downloading and uploading child pornography, the greater the customer demand for it and so the more
25 will be produced.” *United States v. Robinson*, 669 F.3d 767, 777 (6th Cir. 2012). Indeed, “child
26 pornography begets more child pornography,” which “inflames the desires of child molesters, pedophiles,
27 and child pornographers who prey on children.” *United States v. McCalla*, 545 F.3d 750, 756 (9th Cir.

2008).

CONCLUSION

For the reasons stated above the United States respectfully recommends that the Court sentence Defendant to a term of imprisonment not to exceed 36 months.

Dated: November 5, 2019

Respectfully submitted,

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/s/
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